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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/817,842

03/26/2001

Robert F. Gazdzinski

RFG.006CP1

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07/29/2009

GAZDZINSKI & ASSOCIATES

11440 WEST BERNARDO COURT, SUITE 375

SAN DIEGO, CA 92127

EXAMINER

LEUBECKER, JOHN P

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

07/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Defective Appeal Brief

1. In a conversation with a representative for Appellant on or around May 12, 2009, it was decided that a Supplemental Appeal Brief would be filed to correct the pending inconsistencies with the appeal brief as well as make corrections consistent with the cancellation of non-appealed claims made in the communication mailed May 1, 2009. The reason for this was to avoid a Notice of Defective Appeal Brief and allow for a Supplemental Examiner's Answer, in order to expedite this application's return to the Board. However, no communication has been received. Therefore, the following corrections are suggested.

2. Regarding item number 2 of this communication, the status of ALL claims, including those canceled in the communication mailed May 1, 2009 must appear in the Brief as follows:

- a. Claims canceled: 1-14, 17-34, 37, 42-45, 47-49, 54 and 55
- b. Claims rejected: 15, 16, 35, 36, 38-41, 46 and 50-53
- c. Claims being appealed: 15, 16, 35, 36, 38-41, 46 and 50-53

3. Regarding item number 3 of this communication, it is suggested that Applicant point out the Examiner's Amendment mailed May 1, 2009 canceling claims 17-26, 34, 37, 47-49, 54 and 55 as these claims were not being appealed. This will simplify the status of the claims for the Board.

4. Regarding item number 5 of this communication, an exemplary way of setting forth the Grounds of Rejection to be Reviewed is provided in MPEP 1205.02. The Examiner proffers the

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following statement of the Grounds of Rejection on appeal consistent with the claims that were argued in the previously filed Appeal Brief:

112 Rejections

- a. Whether claims 16, 36 and 39 are unpatentable under 35 U.S.C. 112, second paragraph as being indefinite.

102 rejections

- b. Whether claims 15, 16, 35, 38-41, 46 and 50-53 are unpatentable under 35 U.S.C. 102(b) over Alfano et al. (U.S. Pat. 6,240,312).
- c. Whether claims 35, 38, 39, 46 and 50 are unpatentable under 35 U.S.C. 102(e) over Brune (U.S. Pat. 5,984,875).¹

103 Rejections

- d. Whether claims 15, 40, 41 and 51 are unpatentable under 35 U.S.C. 103(a) over Brune (U.S. Pat. 5,984,875) in view of Banyai et al. (U.S. Pat. 6,128,220).²
- e. Whether claim 36 is unpatentable under 35 U.S.C. 103(a) over Brune (U.S. Pat. 5,984,875) in view of Souissi et al. (U.S. Pat. 5,671,247).

- 5. Regarding item number 7 of this communication, the a correct copy of the appealed claims should appear in the appendix. The claims that should appear in the appendix are 15, 16, 35, 36, 38-41, 46 and 50-53.

¹ As noted on page 16 of the previously vacated Examiner's Answer, claims 40 and 41 were erroneously included in the 102(e) rejection over Brune, but were actually addressed in the 103(a) over Brune in view of Banyai et al. Thus, the grounds of rejection, as well as Appellant's arguments, should reflect this.

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6. Because of the complicated nature of the Appeal Brief, the Examiner believes, to the best of his knowledge, that the adoption of the above proposed corrections will place the Appeal Brief in a compliant state. Appellant is still ultimately responsible for filing a compliant Appeal Brief.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (571) 272-4769. The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John P. Leubecker/
Primary Examiner
Art Unit 3739

jpl

² It is noted that claim 15 is argued in the Appellant's previous Appeal Brief (page 12) as if it were a 102(e) rejection when actually it is rejection under 103. Appellant's arguments should be changed to reflect this.